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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LAWRENCE DEANTREA HOUSE,

Defendant and Appellant.

E070430

(Super.Ct.No. FWV17004312)

OPINION

APPEAL from the Superior Court of San Bernardino County. Brigid M. McCann, Judge. Affirmed.

Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting and Kristen Ramirez, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Lawrence Deantrea House “sucker punched” a guest at a party, causing the victim to suffer great bodily injury. Pursuant to a plea agreement, defendant pleaded no contest to battery causing serious physical injury (Pen. Code,¹ § 243, subd. (d)). In return, defendant was placed on formal probation for a period of three years on various terms and conditions of probation. Among the conditions, the trial court ordered defendant to pay victim restitution in the amount of \$42,732.82 plus an additional 15 percent as an administrative collection fee pursuant to section 1203.1, subdivision (l).

On appeal, defendant argues the trial court abused its discretion and misinterpreted section 1203.1, subdivision (l), by assessing an administrative collection fee of 15 percent of the restitution award when there was no showing collection costs were necessary. In the alternative, defendant asserts even if the collection cost was valid, the court erred in not imposing the amount in effect at the time he committed the offense, which was 10 percent, in violation of the ex post facto clause. We reject these contentions and affirm the judgment.

¹ All future statutory references are to the Penal Code unless otherwise stated.

II

FACTUAL AND PROCEDURAL BACKGROUND²

On January 1, 2017, defendant attended a New Year's Eve party at a residence in Rancho Cucamonga, California. While at the party, defendant was involved in an altercation with victim, K.W. Defendant "sucker punched" K.W. in the face, causing K.W. to fall to the ground and become unconscious. K.W. was transported to the hospital where he received treatment and went in and out of consciousness. K.W. suffered from headaches as a result of the injury for at least one month following the incident.

Following a preliminary hearing, on November 30, 2017, an information was filed charging defendant with battery causing serious physical injury (§ 243, subd. (d)).

Before a scheduled jury trial, on January 31, 2018, defendant pleaded no contest to the charges. In return, defendant was placed on formal probation for a period of three years on various terms and conditions of probation and awarded 196 days of credit for time served.

On April 25, 2018, the trial court held a victim restitution hearing. During the hearing, the People and defendant agreed that \$42,732.82 was the appropriate amount of victim restitution. The trial court accepted the agreed-upon restitution amount and indicated it was going to impose a 15 percent administrative fee in addition to the restitution amount.

² The factual background is taken from the preliminary hearing transcript.

Defense counsel objected and argued: “And what [the restitution] statute actually says is not that there is a flat 15 percent fee. What it says is can charge the administrative fee no greater than the actual costs of 15 percent of the total. In this case, the total being [\$]42,732.82. But there’s no indication of what the administrative costs are.” Defense counsel also asserted that defendant was “not responsible for more than the actual costs to do the administrative fee, which has not been demonstrated.” Defense counsel further noted that the court could not “simply order 15 percent flat amount without further information[,]” and again objected to the court’s tentative ruling to impose a 15 percent administrative fee without additional information as to the actual administrative costs incurred.

The prosecutor joined in defense counsel’s objection to the 15 percent administrative fee, asserting that the fee had recently gone up from 10 percent and that the fee “detracts from the ability for the victims to collect on whatever compensation.” The prosecutor also argued that although the administration fee was legal under the statute, the fee would need to be justified by the county. Defense counsel noted that defendant’s offense occurred when the restitution statute provided for a 10 percent administrative fee and objected to a 10 percent administrative fee on the same grounds.

The trial court addressed section 1203.1, subdivisions (b) and (l), and said there was nothing in the statute that required the amount to be justified but that the amount was required to cover the actual administrative cost of collection. The court described the fee as an “administrative cost of collection.” The court recognized that the rate had

previously been 10 percent and recently changed to 15 percent, but said that the change applied to the “actual restitution paid to the victim, not the restitution fine paid to the restitution fund[,]” and that the “restitution fine administrative fee will remain at 10 percent.” Over the defense and the People’s objection, the court said it was going to impose the 15 percent and ordered that restitution be collected prior to any administrative fee.

Defense counsel inquired about the court’s order and asked, “How has the Court determined the actual administrative cost of collection?” and “why is the Court choosing 15 percent as opposed to 10 percent, which was the fee . . . at the time of the date of the offense?” Addressing defense counsel’s questions, the court responded: “First and foremost, the Court is relying on the first portion of subdivision [(1)] of 1203.1. Which is: If it is collected by the county, then the Board of Supervisors shall impose the amount. [¶] The Court is not determining what the actual cost is because the Court is not the body that will be collecting it. If it was to be paid directly to the court through the victim and we had the means to do so, then the Court would be obligated to explain the 15 percent. [¶] The Court does not believe it is required. And therefore, the Court, relying on the fact that the Board of Supervisors shall set that, they did set it, and that is the reason the Court is imposing the amount without any further information to it. [¶] In addition, the Court is ordering the 15 percent as opposed to the 10 percent at the time of the offense, in that the collection of this falls after the date of the imposition of the 15 percent. [¶] The Court recognizes, for the record, that the plea was prior to that date,

but that the collection was after that date. The memo that we had and the last court proceeding was before that date. So that the record is clear. [¶] But at this point in time, the Court believes that the cost of administration of that fee is from this point forward. Not in the past. And because none has been collected prior to that date, the Court believes that the 15 percent is the appropriate term to add.”

The court concluded by stating: “So at this point, [defendant], I am ordering that amount. I am ordering the 15 percent administrative fee. I am going to order that to be paid at 45 dollars a month. Your first payment is to begin on May 22nd and on the 22nd of every month thereafter. [¶] If you are having a hard time with that, make sure you come in, talk to your attorney, talk to probation, or talk to the Court.”

On April 26, 2018, defendant filed a timely notice of appeal.

III

DISCUSSION

Defendant argues the trial court abused its discretion and misinterpreted section 1203.1, subdivision (l), when it assessed an administrative collections fee of 15 percent of the restitution award when there was no showing that such collection costs were necessary.

Section 1203.1, subdivision (l), which authorizes the imposition of an administrative fee for collection of victim restitution ordered as a condition of probation, provides: “If the court orders restitution to be made to the victim, the entity collecting the restitution may add a fee to cover the actual administrative cost of collection, but not

to exceed 15 percent of the total amount ordered to be paid. *The amount of the fee shall be set by the board of supervisors if it is collected by the county* and the fee collected shall be paid into the general fund of the county treasury for the use and benefit of the county. The amount of the fee shall be set by the court if it is collected by the court and the fee collected shall be paid into the Trial Court Operations Fund or account established by Section 77009 of the Government Code for the use and benefit of the court.”

(§ 1203.1, subd. (1), italics added.)

“As the language of this statutory provision makes clear, the entity that collects restitution ‘may add a fee’ related to the collection of restitution for the victim; thus, the entity that collects victim restitution is granted discretion to set a fee. If the entity decides to add a restitution collection fee, it may set the fee at any amount, not to exceed 15 percent of the restitution amount ordered.” (*People v. Guarneros* (2016) 5 Cal.App.5th 42, 49 (*Guarneros*).) Here, the entity, the San Bernardino County Board of Supervisors, had enacted an ordinance in the San Bernardino County Code of Administrative Ordinances that established the collection of such costs. At the time of defendant’s offense, and currently, the San Bernardino County ordinance states, “Victim restitution administrative fee: 15% of amount collected.” (San Bernardino County Code, Ord. No. 4342, amending § 16.0203A, subd. (qq).) Thus, the trial court properly imposed the 15 percent administrative collection fee in connection with victim restitution.

Defendant argues that he should only be liable for the actual costs of collection associated with the collection of victim restitution. However, as he acknowledges,

defendant's exact arguments were considered, and rejected by our colleagues in *Guarneros, supra*, 5 Cal.App.5th 42. In *Guarneros*, the trial court imposed a 15 percent fee for the San Diego County's collection of victim restitution as a condition of the defendant's probation pursuant to section 1203.1, subdivision (l). (*Guarneros*, at pp. 45-46.) The defendant filed a motion requesting that the court either waive that fee or reduce it. (*Id.* at p. 46.) The court denied the motion. (*Ibid.*) On appeal, our colleagues in Division One affirmed the judgment, including the court's order imposing the county's 15 percent restitution collection fee and order denying the defendant's motion to reduce the amount of that fee. (*Id.* at pp. 51-52.) Interpreting section 1203.1, subdivision (l)'s language, our colleagues explained: "When the entity that collects victim restitution is a county, as opposed to the court, the board of supervisors for that county is granted the authority to decide what the collection fee should be, subject only to a ceiling of 15 percent of the restitution amount ordered in a particular case. With respect to victim restitution ordered as a condition of probation in a San Diego County court, the entity of San Diego County (the County), is the entity that collects victim restitution. Therefore, under Section 1203.1[, subdivision](l), if the County wishes to collect a restitution collection fee, the San Diego Board of Supervisors is entitled to 'set' the 'amount of the fee.' The San Diego County Board of Supervisors has enacted an ordinance (the Collection Fee Ordinance) pursuant to Section 1203.1[, subdivision](l), demonstrating the County's desire to impose the administrative restitution collection fee." (*Guarneros*, at p. 49.)

The *Guarneros* court further stated when victim restitution is ordered by a superior court as a condition of probation, the county, and not the court, is the entity that collects victim restitution under section 1203.1, subdivision (1). (*Guarneros, supra*, 5 Cal.App.5th at p. 49.) The court noted that, pursuant to that statute, the San Diego County’s Board of Supervisors enacted an ordinance imposing an administrative restitution collection fee, providing: “‘If the court orders restitution to be made to the victim, a fee to cover the actual administrative cost of collection, but not to exceed 15% of the total restitution ordered, *shall* be added to the restitution fine ordered pursuant to Penal Code Section 1203.1[, subdivision] (1).’” (*Guarneros*, at p. 49.) Although the *Guarneros* court concluded that ordinance gives a trial court discretion to impose a collection fee of up to 15 percent of the amount of victim restitution in a particular case, the court rejected the defendant’s contention that the trial court in his case was required to impose a collection fee in an amount equal to the San Diego County’s actual cost of collecting the restitution amount from him. (*Id.* at pp. 50-51.) The court further concluded the defendant had not shown San Diego County’s 15 percent collection fee was necessarily unreasonable and/or punitive and therefore an abuse of discretion. (*Id.* at p. 51.) Accordingly, the court held the trial court’s imposition of the 15 percent fee for collecting the victim restitution amount as a condition of the defendant’s probation pursuant to section 1203.1, subdivision (1), and San Diego County’s ordinance, was not an abuse of discretion. (*Ibid.*) The court explained because the defendant owed a significant amount of money, over \$310,000 that he would be paying in installments of

\$200 per month, it would take 125 years for payment to be made in full, causing a significant expense for the county. (*Id.* at p. 51.)

Unlike the defendant in *Guarneros*, defendant did not file a motion below for reduction of San Bernardino County's 15 percent fee for collecting the victim restitution that was ordered as a condition of his probation. However, we find *Guarneros* is directly on point, and decline defendant's request to not follow that case. In the court below, defendant argued, the court should not impose the 15 percent collection fee because "there's no indication of what the administrative costs are." He further noted that he was "not responsible for more than the actual costs to do the administrative fee, which has not been demonstrated[,]" and that the court "cannot simply order [a] 15 percent flat amount without further information." The record does not contain any statement by the trial court affirmatively showing it did not understand its discretion or that it misinterpreted section 1203.1, subdivision (l). Rather, the court's comments show it properly construed section 1203.1, subdivision (l), and San Bernardino County's ordinance requiring it to impose a collection fee when ordering payment of victim restitution through the county. (*Guarneros, supra*, 5 Cal.App.5th at p. 49.) Absent an affirmative showing the court did not understand its discretion, we presume the court understood the scope of its discretion, but nevertheless exercised its discretion to impose the 15 percent collection fee. (Cf. *People v. Henson* (1991) 231 Cal.App.3d 172, 182 [trial court's mere silence whether it was engaging in exercise of its discretion was insufficient to overcome presumption that it understood, and exercised, its discretion].)

Furthermore, as the People note, defendant was ordered to pay victim restitution in installments of \$45 per month toward the total \$42,732.82 amount. At a rate of \$45 per month, it may take San Bernardino County about 79 years to collect a single defendant's victim restitution amount. Defendant, like the defendant in *Guarneros*, cannot show the 15 percent collection fee imposed by the court will exceed San Bernardino County's actual costs of collecting the victim restitution amount over that lengthy time period or is otherwise unreasonable. (Cf. *Guarneros, supra*, 5 Cal.App.5th at p. 51 [15 percent fee imposed by trial court for County's collection of \$200 per month victim restitution payments over 125-year period was not unreasonable].) Accordingly, defendant has not carried his burden on appeal to show the trial court abused its discretion by awarding a full 15 percent collection fee rather than a reduced percentage.

Defendant also asserts that even if this court finds the administrative collection fee is valid, the court erred in imposing a 15 percent collection fee because the amount in effect at the time he committed the offense was 10 percent, and imposition of the greater amount violates the ex post facto clause. Defendant is incorrect. Section 1203.1, which authorizes the 15 percent administrative collection fee, has not been amended since 2012. (Stats. 2010, ch. 178, § 75, operative Jan. 1, 2012.) Accordingly, the current language allowing for an administrative collection fee of up to 15 percent is what was in effect on January 1, 2017, the date of defendant's crime. The maximum fee under section 1203.1, subdivision (l), was increased from 10 percent to 15 percent effective January 1, 2010. (See Stats. 2009, ch. 606, § 5.) In addition, the San Bernardino County's ordinance,

which authorized the 15 percent collection fee, was in effect at the time of defendant's offense. (See San Bernardino County Code, Ord. No. 4342, amending § 16.0203A, subd. (qq).) Accordingly, we reject defendant's ex post facto claim and assert the court should have imposed a 10 percent collection fee.

In sum, we find the trial court did not abuse its discretion and properly imposed the 15 percent administrative collection fee in connection with victim restitution.

IV

DISPOSITION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.